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ABSTRACT

This report explains the procedure for terminating parental rights and discusses related issues, including grounds for termination, consideration of the child's best interests, and procedural safeguards for the rights of parents. Emerging issues of interest to state legislators are examined. An analysis of involuntary termination of parental rights statutes in all 50 states and Puerto Rico is outlined in Appendices A-1 and A-2. Appendix B provides a checklist for examining major points in termination law. (RH)

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STATE LEGISLATIVE REPORT

TERMINATION OF PARENTAL RIGHTS

by

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INVOLUNTARY TERMINATION OF PARENTAL RIGHTS: A STEP TOWARD PERMANENCY FOR CHILDREN

INTRODUCTION

The termination of parental rights means the end of a parent-child relationship. There are few state imposed deprivations more severe and personal than the loss of one's child. On the other hand, the failure to terminate parental rights can prevent a child from having the permanency and stability that comes from being part of a functional family. Terminating parental rights is a process that takes place in unison with other governmental actions. It is a final step that should be taken only after efforts to preserve the family unit have failed. The state has a powerful role in deciding when the ties between parent and child should be severed. A basic conflict exists between public and private interests--the state must sometimes interfere with the family unit to protect a precious resource: children.

State legislators should balance the rights of parents and children in statutes by specifying clear grounds and procedures for termination. The more precise the law, the easier it becomes for judges, social service professionals, lawyers and parents to decide whether termination should be considered. Explicit grounds for termination provide guidance for the courts and promote consistency in decisions regarding placing children for adoption, while protecting the rights of both parents and children.

This report explains the termination procedure and related issues, including grounds for termination, consideration of the child's best interests, and procedural safeguards for the rights of parents. Emerging issues of interest to state legislators are also examined. An analysis of involuntary termination of parental rights statutes in all 50 states and Puerto Rico is outlined in Appendices A-1 and A-2. Appendix B provides a checklist for examining major points in termination law.

BACKGROUND

State statutes and procedures have changed significantly from the time when indefinite placement of a child in a foster home was the norm after judicial intervention became necessary. Removal itself was thought to be in the child's best interests; there was little understanding of the effect that separation from parents might have on the child's emotional and psychological well-being. The separation from dysfunctional parents was assumed to be good for the child. But once they were placed in foster care children could spend the rest of their formative years in the system, with no planned effort to reunify them with their families or to pursue adoption. Some children were thus left to drift in foster care, never experiencing a permanent home, and exposed to the potential emotional and psychological harm that can result from not being part of a nurturing family.

Permanency planning is the term used to describe the movement to ensure homes for abused and neglected children, either with their own families or in adoptive ones. Termination is part of permanency planning since it frees for adoption children who cannot return home. The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) was designed to facilitate permanency planning for abused and neglected children. The federal legislation requires a judicial determination that a state welfare agency has made reasonable efforts to 1) prevent removal of the child and, 2) when removal is necessary, reunify the family by returning the child home as soon as possible. The majority of states have statutes that reflect these principles.

SPECIFIC GROUNDS FOR TERMINATION

Each state has a set of criteria--grounds for termination--outlining conditions or situations that may justify permanently taking a child away from its parents. In termination actions, specific grounds give the courts direction to ensure that parental rights and the best interests of the child are balanced.

Parental Conditions. Limitations in a parent's ability to care for a child have become a consideration in the court determination of parental fitness. Mental illness, mental retardation, chronic and serious substance abuse, and long-term imprisonment with no possibility of parole in the foreseeable future are parental conditions that, in some states, constitute separate grounds for termination of parental rights.

Parental Conduct. The failure of parents to make necessary adjustments to prepare for the child's return, despite agency efforts to rehabilitate the family, provides additional grounds for termination. And in some instances--where egregious parental conduct makes it obvious that reunification is inappropriate--termination of parental rights may proceed without agency efforts at rehabilitation. Parental disinterest in the child, evidenced by true abandonment or effective abandonment--for example, minimal contact over a period of time--may also be cause for termination. The most common statutory definitions of grounds for termination include abandonment, neglect and abuse.

Statutory Duties of Agency. The state child welfare agency is responsible for making reunification of troubled families a priority. Twenty-eight states include language in their statutes emphasizing the importance of parental and agency compliance with rehabilitative case plan goals. Defenses most frequently used in termination cases are the agency's failure to provide support services to a family, facilitate visitation or help parents in their rehabilitative efforts. Some experts in the field of foster care suggest that legislation specifically outline the agency's responsibility for family reunification efforts.

BEST INTERESTS OF THE CHILD

Forty-one states have statutes that consider the best interests of the child when deciding on involuntary termination of parental rights. Increasingly the interpretation of best interest focuses on new aspects of the psychological well-being of the child, including recognition of the trauma associated with separation from the child's family and the effects of a lengthy stay in the foster care system.

Where out-of-home placement or adoption once was an almost automatic response, the emphasis now is on permanency planning and family treatment. However, if a secure and stable relationship is lacking, if there is extreme antipathy on the part of the child toward the parent, if there has been a substantial erosion of the child-parent relationship, ending that relationship may be in the child's best interests. There may also be situations when the child's best interests are served by providing for visitation even after formal termination of parental rights.

Alternative Placements. Other types of placement--such as guardianship with long-term caregivers, permanent foster placement and group homes--would not necessarily require termination and in some statutes are considered as options in the child's best interests.

Child's Preference. Some states consider the child's preference when making a termination decision. California considers preference if the child is age 10 or older; Massachusetts and Wisconsin when the child is 12 or older; Hawaii, Louisiana, Missouri, New Mexico, New York, Texas, Virginia, and West Virginia if the child is 14 or older.

Time Frames. Time frames have become a significant component of termination statutes in many states. Time frames can be used as part of the grounds for termination, as a reasonable parameter for family rehabilitation and as a measuring point to begin the termination procedure.

A few states specify that the length of time in foster care is a separate ground for termination. In most states time frames are important to other grounds, such as desertion and parental improvement. Thirty-four states limit dissolution of parental ties according to the length of time the child has been removed from the home. The majority of those states allow one year or more before mandating or permitting the termination proceeding, but only after reunification efforts have been made. Some states, such as Alabama and New Mexico, have created shorter time frames for younger children.

TERMINATION PROCEDURES

Formal legal action to terminate parental rights is normally preceded by court action concerning placement of a child in foster care, necessitated by abuse or neglect. Adjudication, the first procedural step, identifies problems that justify state intervention. Disposition hearings then focus on determining remedies for the problems identified at adjudication. When a child is placed in foster care, federal legislation (P.L. 96-272) requires periodic reviews.

Generally, proceedings to terminate parental rights should be separate from other hearings such as adjudication, disposition or review, and from possible adoption actions. In extreme cases--involving, for example, prior abuse adjudications or repeated out-of-home placements--a decision on termination of parental rights may be appropriate at the time of disposition, but then only with a separate petition and full notice to those affected. The termination trial itself is, in part, a recounting of the history of the relationship between the natural parent and child. The petitioner, usually the state child welfare agency, has the burden to prove by clear and convincing evidence that the parent is unable or unwilling to assume responsibility for providing adequate care for the child. The petitioner must convince the court that 1) the child was removed for good cause, 2) reunification efforts were unsuccessful, 3) the child cannot return home safely, and 4) termination will lead to a better, more stable placement for the child.

Legal Representation. In 46 states the statutes require that a legal representative or guardian ad litem be appointed to represent the child in termination proceedings. In five states appointment of a guardian ad litem is at the judge's discretion. Hawaii allows appointment of a guardian ad litem in abuse and neglect cases only.

SAFEGUARDS FOR THE RIGHTS OF PARENTS

In termination proceedings, emphasis was placed traditionally on parental fitness. More recently, because of a higher burden of proof standard and the desirability of reunifying families, there has been increased emphasis on procedural safeguards for parents' rights. An illustration of this new focus is seen in Illinois and Kentucky laws that forbid consideration of parental conduct which has no impact on the parent-child relationship.

Notice Requirements. After a termination petition is filed, the parents receive notice. Some states have statutory provisions for others to receive notice also, including the guardian ad litem, the child, the child welfare agency (if it is not the petitioner), the putative father, foster parents and other adults who have been in a caretaking role.

Right to Counsel. The majority of states include this due process protection in termination statutes. In 46 states the law provides appointed counsel for indigent parents; in

four states appointment of counsel is at the judge's discretion. In 24 states there are statutory provisions giving indigent parents written notice of their right to counsel.

Right to Appeal. Forty-two states give parents the right to appeal a termination decision; 16 of those states provide an expedited appeal procedure. For example, Wisconsin's statute states that an appeal must be filed within 30 days of the date the termination order is entered.

Standard of Proof. The grounds for termination must be proven by clear and convincing evidence. This strict standard of proof emerged after the Supreme Court decision in Santosky v. Kramer, 455 US 745 (1982), and 35 states have adopted it in their termination statutes. This standard reinforces the importance of providing specific grounds for termination and avoiding vagueness in the law.

EMERGING TRENDS

Putative Father's Rights. Until recent times, termination statutes often ignored the rights of an unwed biological father of a child. Two Supreme Court decisions have brought changes in this area. The first decision--Stanley v. State of Illinois, 405 US 645 (1972)--recognized the rights of unwed biological fathers, with emphasis on due process and the guarantee of equal protection of basic rights. As a result of the Stanley decision states must now devise a procedure to notify putative fathers of termination or adoption actions.

Following a subsequent decision--Caban v. Mohammed, 441 US 380 (1979)--which concerned a putative father's right to veto an adoption, New York enacted legislation establishing a putative father's registry. The registry system enables a person who knows or believes he is the putative father to register his interest in the child. After registration, he receives all legal notices. Failure to register may result in the father sacrificing his parental rights. Eight states have established such a system, which helps protect permanency planning decisions from later appeal.

Other states have incorporated time frames under which the father must respond to a termination notice or lose his parental rights and the right to future notices regarding the child. In four states there is also a statutory provision that no notice of termination of parental rights will be provided to biological fathers who have been convicted of rape, incest or sexually assaulting the mother.

Grandparent Visitation Rights. Visitation rights for grandparents have received increased attention in recent years. A majority of states provide for grandparent visitation upon divorce. When parental rights have been terminated, however, the states are more restrictive in granting visitation rights to grandparents. In 17 states grandparent visitation may be allowed after parental rights have been terminated.

Open Adoption. Under this option, continued visitation by parents or other relatives may be allowed even though parental rights have been terminated. All the parties must agree to such an arrangement, and it must be determined that continued visitation would be desirable for the child.

Indian Child Welfare Act. In response to a significant number of Indian children being placed with non-Indian families without input from their own tribes, this act was passed to ensure tribal court jurisdiction when accessible, the right of tribal court intervention in state courts, and notice not only to parents and significant others but the Indian tribe also. Additionally in termination proceedings, the determination of potential damage must be made by proof beyond a reasonable doubt. Nine states have accepted the federal act or developed similar legislation.

CONCLUSION

Terminating parental rights involuntarily is a formidable exercise of state powers, intervening in the personal relationships of families. Because of its effect on the lives of those involved, it is imperative that states give priority to consideration of a child's basic need for a permanent, stable home--preferably with the child's natural parents. If that is not possible, placement in a family situation that offers permanency and stability is to be desired. Statutes should also provide clear direction to the courts, by delineating specific grounds for termination, by requiring procedures to protect individual and parental rights, and by ensuring reasonable time frames for decision-making.

Laurie H. Smith and Nancy Tyler, legal interns, made significant contributions in the research and writing of this report.

REFERENCES

Byrd, A. Dean. "The Case for Confidential Adoption." Public Welfare (Fall 1988): 20-23.

Dodson, Diane et al. The Legal Framework for Ending Foster Care Drift: A Guide to Evaluating and Improving State Laws, Regulations and Court Rules. Washington, D.C.: American Bar Association, 1983.

Edna McConnell Clark Foundation. Keeping Families Together: The Case for Family Preservation. n.p., 1985.

Freed, Doris Jones, and Walker, Timothy B. "Family Law in the Fifty States: An Overview." Family Law Quarlerly XX, No. 4 (Winter 1987): 452-454, 534-548.

Haralambie, Ann M. Handling Child Custody Cases. Family Law Series. Colorado Springs, Colo.: Shepard's/McGraw-Hill, 1985.

Hardin, Mark, ed. Foster Children in the Courts. Boston: Butterworth Legal Publishers, 1983.

Horowitz, Robert M., and Davidson, Howard A., eds. Legal Rights of Children. Family Law Series. Colorado Springs, Colo.: Shepards's/McGraw-Hill, 1984.

Lange, Linda, ed. Making Reasonable Efforts: Steps for Keeping Families Together. National Council of Juvenile and Family Court Judges, Child Welfare League of America, Youth Law Center, National Center for Youth Law, n.p., n.d.

National Committee for Adoption. Adoption Factbook. Washington, D.C.: 1985.

National Conference of State Legislatures. 1987 State Legislative Summary: Children, Youth, and Family Issues. Denver: December 1987.

_____. 1988 State Legislative Summary: Children, Youth, and Families Issues. Denver: December 1988.

Null, David. "Termination of Parental Rights." Journal of Juvenile Law 9 (1985): 180-188.

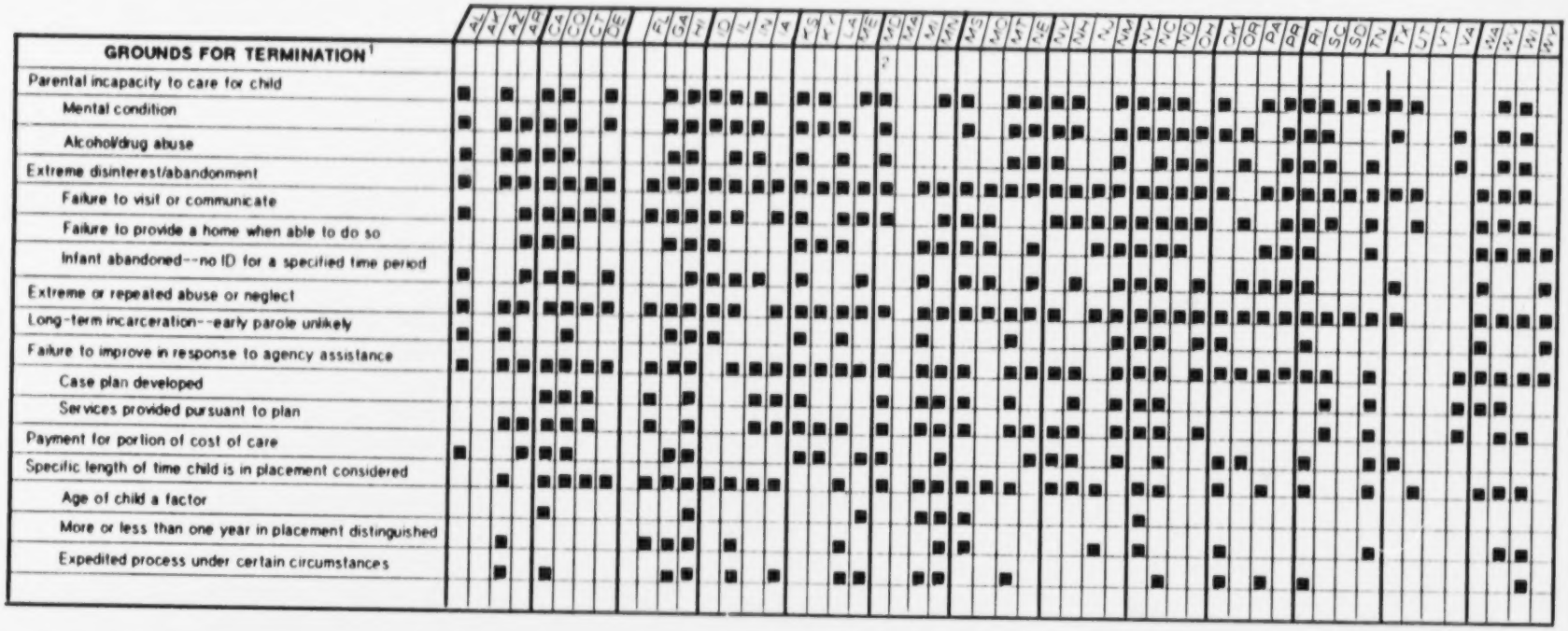
Robison, Susan. State Child Welfare Reform: Toward a Family-Based Policy. Denver: National Conference of State Legislatures, 1986.

Smith, Shelley. Child Welfare in the States: Fifty State Survey Report. Denver: National Conference of State Legislatures, 1986.

Watson, Kenneth W. "The Case for Open Adoption." Public Welfare (Fall 1988): 24-28.

APPENDIX A-1

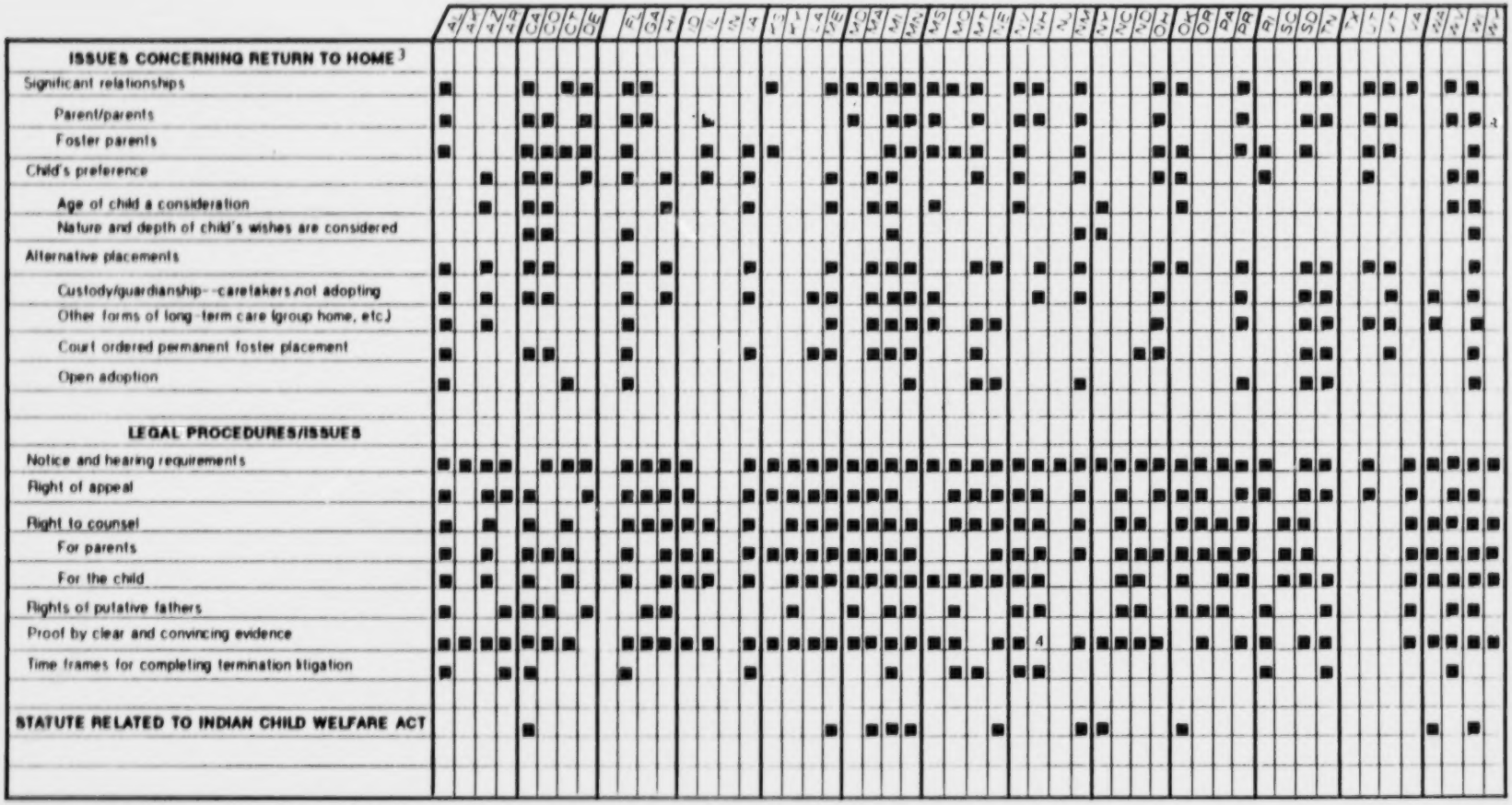
SUMMARY OF MAJOR COMPONENTS OF STATE STATUTES CONCERNING INVOLUNTARY TERMINATION OF PARENTAL RIGHTS


GROUNDS FOR TERMINATION[1]
Parental incapacity to care for child
Mental condition
Alcohol/drug abuse
Extreme disinterest/abandonment
Failure to visit or communicate
Failure to provide a home when able to do so
Infant abandoned--no ID for a specified time period
Extreme or repeated abuse or neglect
Long-term incarceration--early parole unlikely
Failure to improve in response to agency assistance
Case plan developed
Services provided pursuant to plan
Payment for portion of cost of care
Specific length of time child is in placement considered
Age of child a factor
More or less than one year in placement distinguished
Expedited process under certain circumstances
AL AK AZ AR CA CO CT DE FL GA HI ID IL IN IA KS KY LA ME MD MA MI MN MS MO MT NE NV NH NJ NM NY NC ND OH OK OR PA RI SC SD TN TX UT VT VA WA WV WI WY

1. This chart indicates specific statutory language. Note that a number of states have specific requirements explicitly stated in their judicial decisions.
2. The information here applies to termination sought by a county agency. Other statutes allow any individual to petition for termination and adoption in the same proceeding, after having had custody of a child for six months.

APPENDIX A-2

SUMMARY OF MAJOR COMPONENTS OF STATE STATUTES CONCERNING INVOLUNTARY TERMINATION OF PARENTAL RIGHTS



3. Note that a number of states specify that the best interests of the child must be considered. Although specific issues are not designated in the statutory language the factors listed on the chart are considered.

4. New Hampshire's burden of proof is beyond a reasonable doubt.

APPENDIX B

CHECKLIST FOR EVALUATION OF STATUTES DEALING WITH INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

This is a checklist to assist in evaluating your state's current legislation on involuntary termination of parental rights.

	YES	NO
A. Is your statute clear and concise in stating grounds for parental termination?		
B. Does your statute include grounds for termination that occur on a commonly recurring basis?		
1. Parental incapacity		
a. Mental condition		
b. Drug or alcohol abuse		
2. Extreme indifference/abandonment		
a. Failure to visit		
b. Failure to provide a home when able to do so		
c. Abandonment of infant with no I.D. for specified period of time		
3. Severe or repeated abuse		
4. Severe or repeated neglect		
5. Extremely negative emotional reaction of child		
6. Incarceration with no possibility of parole within reasonable time frames considered in combination with other issues		
7. Failure to improve in response to agency assistance to family		
a. Maintenance of contact with child		
b. Failure to adjust necessary home conditions to return child to home		
1) Maintaining dangerous household conditions		
2) Exhibiting bizarre or violent behavior		
3) Good case planning and services although provided, were unsuccessful		
8. Payment of portion of child care		
C. Does your statute require provision of services to support reuniting of family?		
1. Counseling/treatment		
2. Parenting education		
3. Other support services		

	YES	NO
D. Does your statute have specific time frames incorporated into grounds for termination when needed?		
1. Termination permitted within one year of foster care placement of child under 3 years of age		
2. Termination permitted within 18 months of foster care placement of child over 3		
3. Shortened time frames are available, when required, for child's best interest		
4. Termination permitted when family fails to improve condition of home after specified period of time		
E. Is the best interest of the child specifically considered?		
1. Child's preference		
a. Age of child		
b. Wishes of child		
2. Alternative placements		
a. Custody or guardianship with relative or other long term care providers		
b. Residential treatment facility		
c. Group home		
d. Permanent foster home placement		
e. Open adoption		
F. Does your statute separate termination hearings from other hearings?		
G. Does your statute specifically address these procedures in your state?		
1. Notice		
a. Criteria and procedures to deal with putative fathers		
b. Right to counsel		
c. Petition requirements		
d. Appeal rights		
e. Access to records and expert evaluations		
f. Clear and convincing burden of proof		
2. Is there a reasonable time frame for these procedures?		
3. Is there a reasonable time frame for completion of termination litigation?		
H. Do other parts of state child welfare statutes require reunification services?		

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Child Support Enforcement. With the passage of the 1988 Family Support Act, states will be required to strengthen laws for establishment and enforcement of child support and improve paternity establishment records. The project, under contract with the federal Office of Child Support Enforcement, answers information requests regarding issues that include child support enforcement, paternity establishment, enforcement techniques, welfare reform, guidelines, and custody and visitation.

Child Welfare. Funded by the Edna McConnell Clark Foundation and the Foundation for Child Development, this project assists state legislators in improving state child welfare systems serving children and families in crisis. Out-of-home placement is the most expensive form of service and contributes to trauma for the child and instability for the family. With increasing placements and costs states are exploring service alternatives. Information is available on family preservation services, adoption, other placement alternatives, interagency coordination, financing child welfare services, and child abuse and neglect.

Teen Pregnancy. The Teenage Pregnancy Project, funded by the Ford Foundation, provides state legislators and legislative staff with information and resources from state experience related to teenage pregnancy and parenting. The project responds to information requests regarding topics that include: family life education; school-based health clinics; youth-at-risk and dropout prevention; dispensing of contraceptives; abortion and related parental consent issues; outreach to teen males; and financial liability.

For more information, call or write Shelley Smith, Program Manager, Children, Youth, and Families Program, National Conference of State Legislatures, 1050 Seventeenth Street, Suite 2100, Denver, Colorado 80265, (303) 623-7800.